

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

December 10, 2002

Chairman Sara Kyle
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: 1220-4-2.59 Regulations For Special Contracts, Docket No. 00-00702

Dear Chairman Kyle:

Enclosed is an original and thirteen copies of the proposed Regulations For Special Contracts from the Consumer Advocate and Protection Division of the Office of the Attorney General. These proposed rules should be read in conjunction with the Consumer Advocate and Protection Division's filing on December 5th, 2002, regarding Rulemaking Proceeding- Regulations for Term Arrangements for Telecommunications Services. We request that these documents be filed with the TRA in Docket No. 00-00702. Additionally, all parties of record have been served copies of these documents. If you have any questions, please contact me at (615)741-8733.

Sincerely,

A handwritten signature in cursive script that reads "Vance C. Broemel".

VANCE BROEMEL
Assistant Attorney General

Enclosures

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Rulemaking Hearing Rules
of the
Tennessee Regulatory Authority

Chapter 1220-4-2
Regulations for Telephone Companies

Amendments

1220-4-2-.59 Regulations For Special Contracts

- (1) A special contract between a telecommunications service provider and an end user will be effective, when in the Authority's judgment, the telecommunications service provider has provided sufficient evidence substantiating that:**
 - (i) the service provider's price of service under its existing tariff is not competitive with the price of the service provider's competitor, and;**
 - (ii) the end user has a competitive alternative available, where the price of the alternative shall be known as the "competitive market price."**
- (2) Definitions.**
 - (a) End User - Any consumer of telecommunications services who does not sell or resell telecommunications service.**
 - (b) End User's Special Contract Payment Schedule - The expected or actual payment from the end user to the service provider for each month of the special contract's duration.**
 - (b) End User's Termination Liability - In the event the end user terminates the special contract before the agreed-on termination date, the end user's termination liability is**

the end-user's-benefit-of-the-bargain for each month multiplied by the number of months remaining in the special contract, up to a maximum of 12 months plus unrecovered facility-cost for facilities that cannot be reused and that were dedicated to the end user.

- (c) **End User's Termination Liability Schedule** - A schedule for each month of the contract's duration showing the end user's liability, as of that month, to the service provider in the event the end user terminates the contract before the contract's agreed-on termination date.
- (d) **End-User's-Benefit-of the-Bargain** - The difference between the special contract's service price to the end user and the competitive market price referred to in Section (1)(i) as the reason the service provider decided to offer the special contract to the end user. In the event the competitive market price is unknown or less than the special contract's service price, the end-user's-benefit-of-the-bargain is zero.
- (e) **First Seller** - The service provider who sells the special contract to the reseller.
- (f) **Incumbent** - The service provider compelled to unbundle network elements according to the Federal Communications Commission's *Local Competition Order FCC Docket No. 96-98, First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, (August 8, 1996)*.
- (g) **Reseller** - The service provider who purchases the special contract from the first seller.
- (h) **Reseller's Payment Obligation to the First Seller** - The reseller's payment obligation to the first seller shall be no greater than the amounts in the end user's special contract payment schedule, where such payments are discounted by the percentage discount ordered by the Authority in *Tennessee Regulatory Authority Docket No. 96-01331, The Avoidable costs of Providing Bundled*

Service for Resale by Local Exchange Telephone Companies, (January 17, 1997).

- (i) **Reseller's Termination Liability** - In the event the reseller terminates the resold special contract before the agreed-on termination date with the first seller, the reseller's termination liability to the first seller is the end user's termination liability discounted by the percentage discount ordered by the Authority in *Tennessee Regulatory Authority Docket No. 96-01331, The Avoidable costs of Providing Bundled Service for Resale by Local Exchange Telephone Companies, (January 17, 1997).*
- (j) **Resold Special Contract** - A special contract sold by one service provider to another service provider, where such sale complies with with the Federal Communications Commission's *Local Competition Order FCC Docket No. 96-98, First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, (August 8, 1996);* the Federal Communications Commission's *Memorandum Opinion and Order FCC Docket No. 99-38, (CC Docket No. 97-100) Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 (December 9, 1999);* and the discount ordered by the Authority in *Tennessee Regulatory Authority Docket No. 96-01331, The Avoidable costs of Providing Bundled Service for Resale by Local Exchange Telephone Companies, (January 17, 1997).*
- (k) **Retail Service** - Any telecommunications service sold to an end user.
- (l) **Service Provider** - Any telecommunications service provider which sells retail services to an end user.
- (m) **Similarly Situated End User** - Any end user meeting the criteria of 4(b) or 4(c) of these rules.
- (n) **Special Contract** - A contract for retail service between the end user and any service provider who files tariffs with the Authority and where the contract has a duration longer than 90 days, and where the services offered in the

contract are services offered in the service provider's tariffs, and where the contract's prices and other financial inducements offered to the end user are different from the prices and other financial inducements in the tariffs.

- (3) **Competitive Alternative Available** - A competitive alternative shall be deemed available when the service provider makes a showing for regulatory relief which complies with 47CFR §69.727 "*Regulatory relief*" with specific regard to the thresholds of 47CFR §69.711 "*Channel terminations between LEC end offices and customer premises*" in geographic areas in Tennessee described in 47CFR §69.707, "*Geographic scope of petition*" as ordered and noticed in the Federal Communications Commission's *Fifth Report and Order and Further Notice of Proposed Rulemaking [Pricing Flexibility Order]* FCC Docket 99-206 (August 5, 1999).
- (4) **Availability To End Users** - When in the Authority's judgment, a service provider has met the criteria of (1)(i) and (1)(ii) for offering a special contract to a specific end user, any other end user:
- (a) who, in the Authority's judgment, qualifies for the general tariff services which are the same as the services provided to any other end user via a special contract; and
 - (b) who, in the Authority's judgment, is similarly situated to any other end user receiving the special contract; or
 - (c) who, in the Authority's judgment, is similarly entitled to the rates and benefits of the special contract provided to any other end user via the special contract; or
 - (d) who, in the Authority's judgment, would be harmed by being denied the benefits of any other end user's special contract; or
 - (e) who, in the service provider's judgment, is similarly situated to any other end user receiving the special contract;

Shall with all due speed receive those services at the same prices and same financial benefits enjoyed by the end user who has already

entered into the special contract.

(5) Filing requirements.

(a) Each service provider who files tariffs with the Authority shall file with the Authority for its approval a final, signed copy of each special contract inclusive of attachments and addendums-at least thirty (30) days before the effective date of such contract.

(b) Each telecommunications service provider shall file with the Authority a similarly-situated-analysis giving the Authority sufficient evidence to make readily a determination regarding the availability conditions of Section 4(b) and 4(c) and giving other end users sufficient information to determine whether they are similarly situated to any other end user enjoying the benefits of a special contract.

A "similarly-situated-analysis" shall include detail, data and narrative including but not limited to:

- (i) the end user's type of business in Tennessee;**
- (ii) the end user's competitors in Tennessee;**
- (iii) the end user's service locations in Tennessee;**
- (iv) end user's annual intra-state tariff-billed volumes for each of the most recent three years;**
- (v) the general tariffs that apply to the end user;**
- (vi) the differences between the price of services and financial inducements offered in the special contract and the price of services and financial inducements offered in the general tariff.**

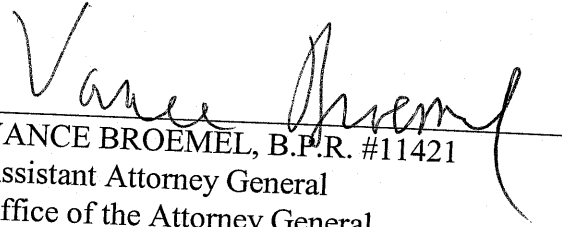
(c) All filings of special contracts shall be accompanied by the end user's termination liability schedule, the end user's name, the end user's business address and the addresses of each end user's Tennessee-location being served by the special contract.

(d) All filings of special contracts by incumbent telephone companies shall be accompanied by cost justification demonstrating adherence to the price floor as required under Tenn. Code Ann. § 65-5-208(c).

(6) Similarly Situated Compliance.

Each service provider which has filed special contracts with the TRA shall provide a bi-annual report stating how many customers have entered into a special contract on the basis of being "similarly situated" and how many have been denied such entry on the basis of not being "similarly situated."

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "Vance Broemel", is written over a horizontal line.

VANCE BROEMEL, B.P.R. #11421

Assistant Attorney General

Office of the Attorney General

Consumer Advocate and Protection Division

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2002, a copy of the foregoing document was served on the parties of record, via US Mail:

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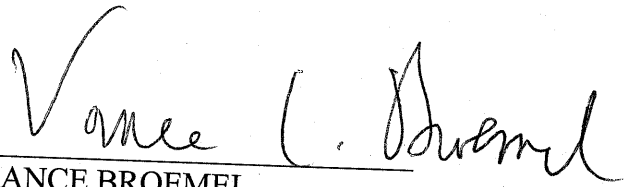
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